

REQUEST FOR PROPOSAL (RFP)

Bid Event Number:	EVT0002480
Document Number:	RFX0000414
Replaces Contract:	New
Date Mailed:	July 1, 2013
Closing Date:	August 13, 2013, 2:00 PM
Procurement Officer:	Tami Sherley Telephone: 785-296-3122 E-Mail Address: tami.sherley@da.ks.gov Web Address: http://da.ks.gov/purch
Item:	Group 11, Services, Legacy System Conversion
Agency:	Statewide , Optional Use
Period of Contract:	Date of Award through June 30, 2015 (with the option to renew for three (3) additional one (1) year periods)
Guarantee:	No Monetary Guarantee Required
Scope:	This Contract shall cover the procurement of Services, Legacy System Conversion for the Statewide during the contract period referenced above.

Event Number EVT0002480 was recently posted to Procurement and Contracts Internet website.
The document can be downloaded by going to the following website:

<http://da.ks.gov/purch/Contracts/bids.aspx>

It shall be the bidder's responsibility to monitor this website on a regular basis for any changes/amendments.

SIGNATURE SHEET**Item:** Services, Legacy System Conversion**Agency:** Statewide, Optional Use**Closing Date:** August 13, 2013

By submission of a bid and the signatures affixed thereto, the bidder certifies all products and services proposed in the bid meet or exceed all requirements of this specification as set forth in the request and that all exceptions are clearly identified.

Legal Name of Person, Firm or Corporation_____

Mailing Address_____ City & State_____ Zip _____

Toll Free Telephone_____ Local_____ Cell: _____ Fax_____

Tax Number_____

CAUTION: If your tax number is the same as your Social Security Number (SSN), you must leave this line blank. **DO NOT** enter your SSN on this signature sheet. If your SSN is required to process a contract award, including any tax clearance requirements, you will be contacted by an authorized representative of the Procurement and Contracts at a later date.

E-Mail _____

Signature_____ Date_____

Typed Name _____ Title_____

In the event the **contact for the bidding process** is different from above, indicate contact information below.

Bidding Process Contact Name_____

Mailing Address_____ City & State_____ Zip _____

Toll Free Telephone_____ Local_____ Cell: _____ Fax_____

E-Mail_____

If **awarded a contract and purchase orders** are to be directed to an address other than above, indicate mailing address and telephone number below.

Award Contact Name_____

Mailing Address_____ City & State_____ Zip _____

Toll Free Telephone_____ Local_____ Cell: _____ Fax_____

E-Mail_____

1. INSTRUCTIONS

1.1. Bid Event ID / Reference Number:

The Bid Event ID / RFP number, indicated in the header of this page, as well as on the first page of this proposal, has been assigned to this RFP and MUST be shown on all correspondence or other documents associated with this RFP and MUST be referred to in all verbal communications. All inquiries, written or verbal, shall be directed only to the procurement officer reflected on Page 1 of this proposal. There shall be no communication with any other State employee regarding this RFP except with designated state participants in attendance ONLY DURING:

- Negotiations
- Contract Signing
- as otherwise specified in this RFP.

Violations of this provision by bidder or state agency personnel may result in the rejection of the proposal.

1.2. Negotiated Procurement:

This is a negotiated procurement pursuant to K.S.A. 75-37,102. Final evaluation and award will be made by the Procurement Negotiation Committee (PNC) consisting of the following entities (or their designees):

- Secretary of Department of Administration;
- Director of Purchases, Department of Administration; and
- Head of Using Agency

1.3. Appearance Before Committee:

Any, all or no bidders may be required to appear before the PNC to explain the bidder's understanding and approach to the project and/or respond to questions from the PNC concerning the proposal; or, the PNC may award without conducting negotiations, based on the initial proposal. The PNC reserves the right to request information from bidders as needed. If information is requested, the PNC is not required to request the information of all bidders.

Bidders selected to participate in negotiations may be given an opportunity to submit a revised technical and/or cost proposal/offer to the PNC, subject to a specified cut off time for submittal of revisions. Meetings before the PNC are not subject to the Open Meetings Act. Bidders are prohibited from electronically recording these meetings. All information received prior to the cut off time will be considered part of the bidder's revised offer.

No additional revisions shall be made after the specified cut off time unless requested by the PNC.

1.4. Cost of Preparing Proposal:

The cost of developing and submitting the proposal is entirely the responsibility of the bidder. This includes costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating for the contract and other costs associated with this RFP.

1.5. Preparation of Proposal:

Prices are to be entered in spaces provided on the cost proposal form if provided herein. Computations and totals shall be indicated where required. In case of error in computations or totals, the unit price shall govern. The PNC has the right to rely on any prices provided by bidders. The bidder shall be

responsible for any mathematical errors. The PNC reserves the right to reject proposals which contain errors.

All copies of cost proposals shall be submitted in a separate sealed envelope or container separate from the technical proposal. The outside shall be identified clearly as "Cost Proposal" or "Technical Proposal" with the Bid Event ID / RFP number and closing date.

A proposal shall not be considered for award if the price in the proposal was not arrived at independently and without collusion, consultation, communication or agreement as to any matter related to price with any other bidder, competitor or public officer/employee.

Technical proposals shall contain a concise description of bidder's capabilities to satisfy the requirements of this RFP with emphasis on completeness and clarity of content. Repetition of terms and conditions of the RFP without additional clarification shall not be considered responsive.

1.6. Signature of Proposals:

Each proposal shall give the complete legal name and mailing address of the bidder and be signed by an authorized representative by original signature with his or her name and legal title typed below the signature line. If the contract's contact will be a different entity, indicate that individual's contact information for communication purposes. Each proposal shall include the bidder's tax number.

1.7. Acknowledgment of Amendments:

All bidders shall acknowledge receipt of any amendments to this RFP by returning a signed hard copy with the bid. Failure to acknowledge receipt of any amendments may render the proposal to be non-responsive. Changes to this RFP shall be issued only by Procurement and Contracts in writing.

1.8. Modification of Proposals:

A bidder may modify a proposal by letter or by FAX transmission at any time prior to the closing date and time for receipt of proposals.

1.9. Withdrawal of Proposals:

A proposal may be withdrawn on written request from the bidder to the Procurement Officer at Procurement and Contracts prior to the closing date.

1.10. Competition:

The purpose of this RFP is to seek competition. The bidder shall advise Procurement and Contracts if any specification, language or other requirement inadvertently restricts or limits bidding to a single source. Notification shall be in writing and must be received by Procurement and Contracts no later than five (5) business days prior to the bid closing date. The Director of Purchases reserves the right to waive minor deviations in the specifications which do not hinder the intent of this RFP.

1.11. Evaluation of Proposals:

Award shall be made in the best interest of the State as determined by the PNC or their designees. Although no weighted value is assigned, consideration may focus toward but is not limited to:

- Cost. Bidders are not to inflate prices in the initial proposal as cost is a factor in determining who may receive an award or be invited to formal negotiations. The State reserves the right to award to the lowest responsive bid without conducting formal negotiations, if authorized by the PNC.
- Adequacy and completeness of proposal
- Bidder's understanding of the project
- Compliance with the terms and conditions of the RFP
- Experience in providing like services

- Qualified staff
- Methodology to accomplish tasks
- Response format as required by this RFP

1.12. Acceptance or Rejection:

The Committee reserves the right to accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this RFP; and unless otherwise specified, to accept any item in a proposal.

1.13. Proposal Disclosures:

At the time of closing, only the names of those who submitted proposals shall be made public information. No price information will be released. Interested bidders or their representatives may be present at the announcement at the following location:

Kansas Department of Administration
Procurement and Contracts
800 SW Jackson Street, Suite 600
Topeka, KS 66612 1216

Bid results will not be given to individuals over the telephone or email. Results may be obtained after contract finalization by obtaining a bid tabulation from Procurement and Contracts by sending (do not include with bid):

- A check for \$3.00, payable to the State of Kansas
- A self-addressed, stamped envelope
- Bid Event ID Number

Send to:

Kansas Department of Administration
Procurement and Contracts
Attention: Bid Results/Copies
800 SW Jackson, Suite 600
Topeka, KS 66612 1216

Copies of individual proposals may be obtained under the Kansas Open Records Act by sending an email to janet.miller@da.ks.gov or calling 785-296-0002 to request an estimate of the cost to reproduce the documents and remitting that amount with a written request to the above address or a vendor may make an appointment by calling the above number to view the proposal file. Upon receipt of the funds, the documents will be mailed. Information in proposal files shall not be released until a contract has been executed or all proposals have been rejected.

1.14. Disclosure of Proposal Content and Proprietary Information:

All proposals become the property of the State of Kansas. The Open Records Act (K.S.A. 45-215 et seq) of the State of Kansas requires public information be placed in the public domain at the conclusion of the selection process, and be available for examination by all interested parties. (<http://da.ks.gov/purch/KSOpenRecAct.doc>) No proposals shall be disclosed until after a contract award has been issued. The State reserves the right to destroy all proposals if the RFP is withdrawn, a contract award is withdrawn, or in accordance with Kansas law. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration or may be returned to the bidder.

Trade secrets or proprietary information legally recognized as such and protected by law may be requested to be withheld if clearly labeled "Proprietary" on each individual page and provided as separate from the main proposal. Pricing information is not considered proprietary and the bidder's entire proposal response package will not be considered proprietary.

All information requested to be handled as "Proprietary" shall be submitted separately from the main proposal and clearly labeled, in a separate envelope or clipped apart from all other documentation. The bidder shall provide detailed written documentation justifying why this material should be considered "Proprietary". Procurement and Contracts reserves the right to accept, amend or deny such requests for maintaining information as proprietary in accordance with Kansas law.

If any part or all of the proposal is marked as being copyrighted, by submission of the proposal itself, the proposer provides the State of Kansas full authority to provide copies of such material, either in paper format or electronically, to interested parties in order for the State to meet its obligations under the Kansas Open Records Act.

The State of Kansas does not guarantee protection of any information which is not submitted as required.

1.15. Exceptions:

By submission of a response, the bidder acknowledges and accepts all terms and conditions of the RFP unless clearly avowed and wholly documented in a separate section of the Technical Proposal to be entitled: "Exceptions". Note that an exception is grounds for disqualification, but if your firm elects to take an Exception, this is where it shall appear. Providing a place to show them does not indicate we are soliciting exceptions. Any exception taken does not appear in "Exceptions" section of the Technical Proposal shall be given NO EFFECT. (See Section 4.3.3 for more).

1.16. Notice of Award:

An award is made on execution of the written contract by all parties.

1.17 News Releases:

Only the State is authorized to issue news releases relating to this Request, its evaluation, award and/or performance of the contract.

1.18 Commercial Advertising:

The Contractor shall not refer to this Request, its evaluation, award, or the Contractor's performance under the Contract in any commercial advertising media without the approval of the State. State may withhold approval for any reason.

2. PROPOSAL RESPONSE

2.1. Submission of Proposals:

Bidder's proposal shall consist of:

- One (1) original and two (2) copies of the Technical Proposal, including the signed Event Details document, applicable literature and other supporting documents;
- One (1) original and two (2) copies of the cost proposal including the signed Event Details document,
- Three (3) electronic / software version(s) of the technical and cost proposals are required. This shall be provided on CD or flash drive, in Microsoft® Word or Excel. Technical and cost responses shall be submitted on separate media.

All copies of cost proposals shall be submitted in a separate sealed envelope or container separate from the technical proposal. The outside shall be identified clearly as "Cost Proposal" or "Technical Proposal" with the Bid Event ID number and closing date.

Bidder's proposal, sealed securely in an envelope or other container, shall be received no later than 2:00 p.m., Central Time, on the closing date, addressed as follows:

Kansas Department of Administration
Procurement and Contracts
Bid Event ID: EVT0002480
Closing Date: August 13, 2013
800 SW Jackson Street, Suite 600
Topeka, KS 66612 1216

It is the bidder's responsibility to ensure bids are received by the closing date and time. Delays in mail delivery or any other means of transmittal, including couriers or agents of the issuing entity shall not excuse late bid submissions.

Faxed, e-mailed or telephoned proposals are not acceptable unless otherwise specified.

Proposals received prior to the closing date shall be kept secured and sealed until closing. The State shall not be responsible for the premature opening of a proposal or for the rejection of a proposal that was not received prior to the closing date because it was not properly identified on the outside of the envelope or container. Late Technical and/or Cost proposals will be retained unopened in the file and not receive consideration or may be returned to the bidder.

2.2. Proposal Format:

The format and sections of the Proposal (original and copies) shall conform exactly to the tabbed structure outlined below. All tabs shall be labeled appropriately. Adherence to this format is critical to permit efficient and effective evaluation of proposals. Failure to adhere to this format may result in a proposal being discarded without further notice. It is acceptable to describe the parts of a response as a section, tab, part, or other nomenclature chosen by the vendor as long as such is not confusing and so long as no change is made to the arrangement of contents within a section. The Proposal shall be in the following format:

Cover

Title Page (See Appendix B)

First Tab – Forms

- Signature Sheet (RFP page 2)
- Addenda Receipt pages (if Addenda are issued)
- Transmittal Letter (see Section 2.3)
- Second Tab – Contract
 - DA-146a
- Third Tab – Exceptions
- Fourth Tab – References
- Fifth Tab – Proposer Information
- Sixth Tab – Subcontractor Information
- Seventh Tab – Proposal Body
- Eighth Tab – Cost Information
- Ninth Tab – Marketing Materials
- Tenth Tab – Resumes

The following sections describe the content required in each of the sections of the Proposal.

- 2.2.1 Cover:
 - Proposals may be bound in a manner of the proposer's choosing, and the cover may be as preferred by the proposer. The proposer may elect to use the Title Page as a Cover.
- 2.2.2 Title Page: The Title page shall only include:
 - The Bid Event Number
 - The Group (11) to which the Proposal applies
 - The Group name as appropriate
 - The Proposer's corporate name and address

The entries on the Title page shall be in at least a 24pt. font size.
See Appendix B for an example
- 2.2.3 First Tab or Section – Forms: Include the listed forms in the order listed.
 - Signature Sheet.
 - Addenda Receipt (s). Proposer shall acknowledge receipt of all Bid Event addenda by including a signed copy of each addendum cover page here. Vendors do not have to print and return a complete copy of the Bid Event or any issued Addenda as part of their response. Vendors do need to complete and return the acknowledgement or cover page that accompanies each Addendum as part of their response.
 - Transmittal Letter.
 - Tax Clearance Certificate
 - Immigration Reform Control Act
- 2.2.4 Second Tab or Section – Contract.
 - Bidders must include with their RFP response, a copy of any contracts, agreements, licenses, warranties, etc. that the bidder would propose to incorporate into the any contract generated from this Bid Event. (State of Kansas form DA-146a remains a mandatory requirement in all contracts.)
- 2.2.5 Third Tab or Section – Exceptions: If your firm is taking any Exceptions to any aspect of the Request, they shall be included within this section. If your firm is accepting all the provisions of the Bid Event without modification, make and sign an affirmative statement to that effect on a single sheet and place it within this section. Note that taking an exception to any aspect of the Bid Event may result in a proposal being discarded without further notice.
- 2.2.6 Fourth Tab or Section – References: Insert references information here, including all contact information as required.
 - Provide four (4) unique entities as references who have purchased similar items or services from the proposer in the last two (2) years. References shall show firm name, contact person, address, e-mail address and phone number. Proposer employees and the buying agency shall not be shown as references. Providing two (2) contacts or names for

one (1) entity will not be considered as two (2) entities, it will be counted as one (1) entity.

Additionally, bidders shall list clients who have terminated services (whether for cause or convenience) within the past two (2) years, indicating reasons for termination. Any termination of any contract in any part of a responding shall be disclosed. Provide the firm names, contact person, address, e-mail address and phone of each referenced organization. It our expectation there will be nothing to report here. If there have been terminations, the State would expect the required reference(s) will support a finding the termination occurred through no fault of the vendor. Alternatively, include an affirmative statement following the references indicating no clients have terminated services within the past two (2) years.

2.2.7 Fifth Tab or Section – Bidder Information (See Section 2.5)

2.2.8 Sixth Tab or Section – Subcontractors Information: The proposer shall include a narrative for the proposer's subcontractor(s) if any. List Subcontractors in alphabetical order within the section. The narrative shall include the following for each subcontractor:

- (a) date established;
- (b) ownership (public, partnership, subsidiary, etc.);
- (c) number of personnel, full and part-time, assignable to this activity by function and job title;
- (d) resources assigned to this project and the extent they are dedicated to other matters;
- (e) organizational chart for your firm. We understand that for large firms this may be at a relatively high level.

2.2.9 Seventh Tab or Section – Proposal Body – Qualifications: A description of the proposer's qualifications and experience providing the requested or similar service. Follow the order of the Bid Event to format this section, unless a specific place for certain information is called for in the tabbed structure laid out in this section 2.2. For example, Off-Shore Sourcing would be covered in this section.

This section is primarily provided so firms will have the ability to “put their best foot forward” and convince the State their qualifications warrant inclusion in the awarded group of firms. The section also provides a place to respond to other requirements expressed in the RFP, the Off-Shore Sourcing paragraph 3.42 being a very good example, where we ask firms to identify where the contracted work will be performed and to identify whether any services will be provided at a site outside the United States. Since that paragraph does not specifically identify where the answer is to be provided, and section 2.2 also does not reference the Off-Shore Sourcing question, the answer would go in the Proposal Body as a default location.

2.2.10 Eighth Tab or Section - Cost Information: Each Task Order within this Contract will be individually priced. However, respondents shall provide information about their present pricing structures. A compliant response will include a description of labor categories relevant to the group being proposed and available from the respondent along with an hourly rate for each labor category. The labor category description should be detailed enough that the State can determine equivalencies in competing proposals. See http://www.cje.com/gsa/info_np/CJE36%20Labor%20Category%20Descriptions.html and <http://www.cdc.gov/od/pgo/rfp/2000N00120LaborCategories.pdf> for examples of labor category descriptions that would meet this requirement. Rates quoted should be “fully loaded”, i.e. include all fringe benefits and associated costs such as travel if necessary for the work to be done anywhere in State, recognizing that the bulk of engagements will

originate in the Topeka-Kansas City metropolitan area. Firms may use any reasonable format for providing labor category/rate information.

- 2.2.11 Ninth Tab or Section - Marketing Materials - Technical Literature: Include here pre-published materials germane to the request.

Materials in this section should amplify the positive material provided in the Proposal Body. Examples might be reproductions of Gartner or Forrester reports recognizing the firm as being exemplary in their field, or published trade news stories of relevant successful engagements, or brochures that readily summarize a firm's qualifications and standing.

- 2.2.12 Tenth Tab or Section – Resumes: Include resumes of *employees* who will be delivering the services contemplated by the requirements of the Group. We are interested in seeing the resumes of *employees* in your firm who would reasonably be detailed to work on State Task Orders. We are not interested in seeing collections of resumes from a “resume bank” or from persons who you “might” use to satisfy requests. We are trying here to gauge the depth and experience of existing *employees*, and thereby, the capability of the firm. Agencies will need a wide variety of skills and skill levels to address work in the identified groups. Part of the evaluation will be an effort to identify firms with broad and experienced capabilities in house and readily available.

2.3. Transmittal Letter:

All bidders shall respond to the following statements:

- (a) the bidder is the prime contractor and identifying all subcontractors;
- (b) the bidder is a corporation or other legal entity;
- (c) no attempt has been made or will be made to induce any other person or firm to submit or not to submit a proposal;
- (d) the bidder does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or disability;
- (e) no cost or pricing information has been included in the transmittal letter or the Technical Proposal;
- (f) the bidder presently has no interest, direct or indirect, which would conflict with the performance of services under this contract and shall not employ, in the performance of this contract, any person having a conflict;
- (g) the person signing the proposal is authorized to make decisions as to pricing quoted and has not participated, and will not participate, in any action contrary to the above statements;
- (h) whether there is a reasonable probability that the bidder is or will be associated with any parent, affiliate or subsidiary organization, either formally or informally, in supplying any service or furnishing any supplies or equipment to the bidder which would relate to the performance of this contract. If the statement is in the affirmative, the bidder is required to submit with the proposal, written certification and authorization from the parent, affiliate or subsidiary organization granting the State and/or the federal government the right to examine any directly pertinent books, documents, papers and records involving such transactions related to the contract. Further, if at any time after a proposal is submitted, such an association arises, the bidder will obtain a similar certification and authorization and failure to do so will constitute grounds for termination for cause of the contract at the option of the State;
- (i) bidder agrees that any lost or reduced federal matching money resulting from unacceptable performance in a contractor task or responsibility defined in the RFP, contract or modification shall be accompanied by reductions in state payments to Contractor; and
- (j) the bidder has not been retained, nor has it retained a person to solicit or secure a state contract on an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the

bidder for the purpose of securing business. For breach of this provision, the Committee shall have the right to reject the proposal, terminate the contract for cause and/or deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

2.4. Bidder Information:

The bidder must include a narrative of the bidder's corporation and each subcontractor if any. The narrative shall include the following:

- (a) date established;
- (b) ownership (public, partnership, subsidiary, etc.);
- (c) number of personnel, full and part time, assigned to this project by function and job title;
- (d) resources assigned to this project and the extent they are dedicated to other matters;
- (e) organizational chart;
- (f) financial statement may be required.

2.5. Qualifications:

A description of the bidder's qualifications and experience providing the requested or similar service, including resumes of personnel assigned to the project stating their education and work experience, shall be submitted with the Technical Proposal. The bidder must be an established firm recognized for its capacity to perform. The bidder must have sufficient personnel to meet the deadlines specified in the RFP.

2.6. Timeline:

A timeline for implementing services must be submitted with the bid.

2.7. Methodology:

Bidders shall submit with the bid, a detailed explanation of the methodology for implementing services.

2.8. Political Subdivisions:

Political subdivisions (City, County, School Districts, etc.) are permitted to utilize contracts administered by Procurement and Contracts. Please state in the area provided on the Event Details document whether or not you will allow this usage. Conditions included in this contract shall be the same for political subdivisions. The State has no responsibility for payments owed by political subdivisions. The Contractor must deal directly with the political subdivision.

3. TERMS AND CONDITIONS

3.1. Contract Documents:

This RFP, any amendments, the response and any response amendments of the Contractor, and the State of Kansas DA-146a (Contractual Provision Attachment) shall be incorporated into the written contract, which shall compose the complete understanding of the parties.

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- Form DA 146a;
- written modifications to the executed contract;
- written contract signed by the parties;
- the RFP, including any and all amendments;
- and Contractor's written proposal submitted in response to the RFP as finalized.

3.2. Contract:

The successful bidder will be required to enter into a written contract with the State. The contractor agrees to accept the provisions of Form DA 146a (Contractual Provisions Attachment), which is incorporated into all contracts with the State and is incorporated into this RFP.

3.3. Contract Formation:

No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful bidder.

3.4. Notices:

All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

Kansas Department of Administration
Procurement and Contracts
800 SW Jackson St, Suite 600
Topeka, Kansas 66612-1216
RE: Bid Event ID Number _____

or to any other persons or addresses as may be designated by notice from one party to the other.

3.5. Termination for Cause:

The Director of Purchases may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:

- the Contractor fails to make delivery of goods or services as specified in this contract;
- the Contractor provides substandard quality or workmanship;
- the Contractor fails to perform any of the provisions of this contract, or

- the Contractor fails to make progress as to endanger performance of this contract in accordance with its terms.

The Director of Purchases shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as State may authorize in writing), the Director of Purchases shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

3.6. Termination for Convenience:

The Director of Purchases may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchases shall determine that the termination is in the best interest of the State of Kansas. In the event that the Director of Purchases elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

3.7. Rights and Remedies:

If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

3.8. Force Majeure:

The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.

3.9. Waiver:

Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by State shall not constitute a waiver.

3.10. Independent Contractor:

Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

3.11. Staff Qualifications:

The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the

work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the contract specifications may result in termination of this contract or damages.

3.12. Subcontractors:

The Contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

The State of Kansas requires tax clearance certificates for all subcontractors be submitted with the technical proposal, and that the bidder additionally provide subcontractor(s) legal company name, contact information and tax ID number (FEIN/TIN) as well.

3.13. Proof of Insurance:

No Contract will be executed unless and until appropriate insurance coverage are secured and sufficient evidence of insurance coverage is delivered to the State. Any insurance required by the State shall be in a form and substance acceptable to the State.

All required insurance shall be issued by companies that are A.M. Best A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Kansas. The State of Kansas will be named as an additional insured on all coverages, as appropriate. Required coverages are to remain in effect through the term of the resulting contract. Failure to maintain required insurance coverage during the term of the contract shall be considered a material breach and grounds for termination of the contract. The cost of all required insurance shall be included in the Proposer's proposal. The State may purchase the required coverage for Contractor should Contractor fail to maintain the required coverage and setoff that cost and expense against amount the State may or does owe Contractor for services under this contract.

Insurance provisions shall be at least as follows:

- (a) Workers' Compensation and Employers' Liability coverage with limits consistent with Kansas statutory benefits, and, if some of the project will be done outside Kansas, the laws of the appropriate state(s) where work on the project will be done. Employers' Liability coverage with policy limits of at least \$500,000 or the statutory limit, whichever is greater.
- (b) Commercial General Liability with a combined single limit of at least \$5,000,000 per occurrence written on an occurrence basis. All limits shall be in addition to defense costs.
- (c) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of at least \$1,000,000 per occurrence for bodily injury, personal injury, and/or property damage liability.
- (d) Professional Liability insurance covering all staff with a limit of at least \$1,000,000 per incident and \$3,000,000 aggregate.

Subcontractors: Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

The Proposer accepts full responsibility for payment of all insurance listed above, including but not limited to unemployment insurance and social security as well as all income tax deductions and any

other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

3.14. Conflict of Interest:

The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.

3.15. Confidentiality:

The Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor must agree to return any or all data furnished by the State promptly at the request of State in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by State, will destroy or render it unreadable.

- A. Contractor will have access to information and private or confidential data, maintained by State of Kansas, to the extent necessary to carry out Contractor's responsibilities under this contract. This information and data may include, but is not limited to, personal financial information, information regarding undercover law enforcement agents, student employees, medical providers and/or their recipients, etc. Contractor agrees that any information or data it may have in its custody regarding any participant shall be kept strictly confidential. All the information and data of the State shall be considered to be confidential and private and Contractor may not disclose any information or data at any time to any person or entity. Contractor must comply with all state and federal confidentiality laws in providing services under this contract.
1. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with all applicable State and Federal Acts regarding confidentiality and/or open records issues. No private or confidential data collected, maintained, or used in the course of performance of this contract shall be disseminated by Contractor except as required by statute, either during the period of the contract or thereafter. Contractor will only use confidential information for use only as required by this contract. All electronic data shall be secured through encryption or other comparable security measures.
2. Contractor shall limit access to confidential information solely to staff of Contractor who have a business need to know for purposes of fulfilling Contractor's obligations under this contract. Contractor shall not remove confidential information from State's site without State's prior written approval.
3. Contractor shall hold State harmless and indemnify the State for expenses or damages, of any kind, incurred or suffered by the State as a result of the unauthorized disclosure of said data by Contractor or any agent, representative, employee or subcontractor of Contractor. Contractor shall notify the State of any loss or breach of confidential information or data within twenty-four (24) hours

receipt of such knowledge. Contractor shall also be responsible and liable for any and all damages to individuals due to such breaches or loss of confidential information. In the event of any security breach in which the confidential information of one more individuals is compromised or is potentially compromised, Contractor shall be responsible and pay for any and all damages, expenses, and costs (Including lost wages and efforts spent to defend or correct against identity theft) caused to the State or any individual for the disclosure of any State Information. Contractor shall provide notice to the State and affected individuals of such disclosure and shall also offer free of charge to individual or the State identify theft protection insurance for a period of five (5) years. These terms shall also apply to any third-party vendor or subcontractor.

4. The Contractor shall hold all such confidential information in trust and confidence for the State, and agrees that it and its employees will not, during the performance or after the termination of this agreement, disclose to any person, firm, or corporation, or use for its own business or benefit any information obtained by it while in execution of the terms and conditions of this agreement.
 5. Any staff, individual or entity assigned to work for Contractor under this agreement shall separately sign an agreement(s) to this effect of this Article and also but not limited to the Department of Administration computer security user agreement.
- B. **Unauthorized Use.** The Contractor shall not use the names, home address, phone numbers, or any other information obtained by implementation or execution of this contract about employees, citizens, vendors or other information for any purpose.
- C. **Press Releases, Public Statements, and/or Communications.** Contractor agrees that no public statement, release, or communication acknowledging or implying that the State is a customer of Contractor is allowed under this Contract. Any approval by the State for such public statement, release, or communication shall only be provided in writing by the State. The State may refuse such a request for any reason.

3.16. Nondiscrimination and Workplace Safety:

The Contractor agrees to abide by all federal, state and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws or rules or regulations may result in termination of this contract.

3.17. Environmental Protection:

The Contractor shall abide by all federal, state and local laws, and rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws or rule or regulations may result in termination of this contract for cause.

3.18. Indemnity and Hold Harmless:

- A. **General.** Contractor shall indemnify, defend, and hold harmless the State, including its officers, directors, agents, and employees, from and against all claims, demands, liability, actions, losses, and expenses (including reasonable attorneys' fees) and all other liabilities, asserted against or incurred by State without limitation relating to or arising out of, directly or indirectly, a failure to perform or breach by Contractor of this Contract, including a breach by Contractor of its obligations under any Warranty provisions and for bodily injury or to death of any person or to damage to or destruction of any property, whether belonging to the State or another, excepting only injury, death, damage, or destruction, to the extent it is caused by the negligence of the State,

its agents, or employees. The State shall give reasonable notice to Contractor of any such claim, loss, action, damage, expense, or other liability. Contractor shall further protect, defend, indemnify, and hold harmless the State against any damage, cost or liability, including reasonable attorney's fees, by third parties for any and all injuries to persons or damage to property arising from intentional, willful, or negligent acts or omissions of Contractor, its officers, employees, agents, or subcontractors, a criminal, fraudulent, or dishonest act by Contractor, its officers, employees, agents, or subcontractors.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

B. Intellectual Property Indemnification and Hold Harmless. Contractor represents and warrants that any Developed Software produced hereunder does not violate any patent, mask work rights, copyright, trade secret, trademark, or other proprietary right of any third party, and that Contractor has the right to make disclosure and use of all such information used by Contractor in the performance of the Services. If Contractor uses any patented, trademarked, or copyrighted designs, devices, materials, or other property, tangible or intangible, in connection with its performance of its obligations under this Contract, it shall provide for such use in an approved legal manner by making a proper agreement with the patentee or owner of such trademark or copyright and shall defend and hold State harmless on any claim relating to such items or use by the Contractor or State. Specifically, if any claim of infringement is made by any third party against the State, exclusively due to the State's use of any Work Product provided by Contractor hereunder, the State shall notify Contractor and Contractor shall defend, indemnify, and hold the State harmless against any and all liability, losses, claims, expenses (including reasonable attorney's fees), demand, or damages of any kind arising out of or related to any such claim, whether or not that claim is successful. If the State is enjoined, or likely to be enjoined as determined solely by the State, from using any of the Work Product because of a claim of infringement of proprietary rights of any third party, at the State's request and option the Contractor at its own expense shall:

- (i) obtain for the State the right to continue using such Work Product;
- (ii) replace or modify the Work Product to make it non-infringing, so long as the replacement or modification conforms to the Statement of Work and does not adversely impact functionality or performance of the Work Product running in the State's production environment; or
- (iii) terminate this Contract and refund all payments made by the State herein.

C. Contractor's Negligence. The Contractor shall also hold harmless and indemnify the State against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract, and also including but not limited to:

- (a) any and all civil or criminal loss or damage to the extent arising out of the Contractor's intentional or unintentional failure to comply with Federal Immigration Statutes and Regulations.
- (b) any and all loss or damage to the extent arising out of the Contractor's intentional or unintentional failure to protect and secure personal data of any kind. The State shall in its sole discretion make the determination of this provision.

D. Survive Termination. The provisions of this Article survive termination of this Agreement.

3.19. Care of State Property:

The Contractor shall be responsible for the proper care and custody of any state owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract. The Contractor shall reimburse State for such property's loss or damage caused by Contractor, normal wear and tear excepted.

3.20. Prohibition of Gratuities:

Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.

3.21. Retention of Records:

Unless the State specifies in writing a different period of time, the Contractor agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post contract period. Delivery of and access to the records shall be within five (5) business days at no cost to the state.

3.22. Antitrust:

If the Contractor elects not to proceed with performance under any such contract with the State, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.

3.23. Modification:

This contract shall be modified only by the written agreement of the parties with the approval of the PNC. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective. No oral agreements will be effective to alter this contract. No term or condition of this Contract, documents incorporated by reference, exhibits or related documents may be changed solely by the Contractor. This Contract, exhibits, documents incorporated by reference and any other related documents, other than the DA-146a (Exhibit A), cannot be amended, changed or modified (despite any statement contained therein to the contrary), except by a written amendment executed by and mutually agreed upon by both parties.

3.24. Third Party Beneficiaries:

This contract shall not be construed as providing an enforceable right to any third party.

3.25. Captions:

The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.

3.26. Severability:

If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.

3.27. Governing Law:

This contract shall be governed by the laws of the State of Kansas and shall be deemed executed in Topeka, Shawnee County, Kansas.

3.28. Jurisdiction:

The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas. Contractor waives personal service of process, all defenses of lack of personal jurisdiction and forum non conveniens. The Eleventh Amendment of the United States Constitution is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment.

3.29. Mandatory Provisions:

The provisions found in Contractual Provisions Attachment (DA – 146a) are incorporated by reference and made a part of this contract.

3.30. Integration:

This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This Agreement between the parties shall be independent of and have no effect on any other contracts of either party.

3.31. Debarment of State Contractors:

Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes. Contractor shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.

3.32. Immigration and Reform Control Act of 1986 (IRCA):

All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) Form.

With the submission of this bid, the contractor hereby certifies without exception that such contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination for cause and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce for the State any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like item under the contract.

Contractor will provide a copy of a signed Certification Regarding Immigration Reform and Control Form <http://da.ks.gov/purch/CertificationImmigrationForm.doc> with the technical proposal.

3.33. Worker Misclassification:

The contractor and all lower tiered subcontractors under the contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.

3.34. Injunctions:

Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.

3.35. Statutes:

Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

3.36. Federal, State and Local Taxes:

Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the bidder's price quotation. Upon request, the State shall provide to the Contractor a certificate of tax exemption.

The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

3.37. Accounts Receivable Set-Off Program:

If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, agency payments to the Contractor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq, Contractor shall have the

opportunity to challenge the validity of the debt. If the debt is undisputed, the Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes Contractors against debts owed by the Contractors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

3.38. Definitions:

A glossary of common procurement terms is available at <http://da.ks.gov/purch>, under "Purchasing Forms".

3.39. Indefinite Quantity Contract:

This Request is for an open-ended contract between a Contractor and the State to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made. An estimated quantity based on past history or other means may be used as a guide.

3.40. Experience:

All bidders are preferred to have continuous active participation in the applicable industry, providing equipment/services comparable in size and complexity to those specified herein.

Bidders may be required to furnish information supporting the capability to comply with conditions for bidding and fulfill the contract if receiving an award of contract. Such information may include, but not be limited to, a list of similar size and type projects the bidder has completed.

3.41. Prices:

Prices shall remain firm for the entire contract period and subsequent renewals. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the State of Kansas. Failure to provide available price reductions may result in termination of the contract for cause.

3.42. Payment:

Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires state agencies to pay the full amount due for goods or services on or before the 30th calendar day after the date the agency receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the Contractor and the state agency. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

Payments shall not be made for costs or items not listed in the Contractor's response.

Payment schedule shall be on a frequency mutually agreed upon by both the agency and the Contractor.

3.43. Unit Pricing:

Each item required by the bid must be individually priced (i.e. priced per single unit) and be able to be ordered individually.

3.44. Upgrades:

Bidders shall indicate the upgrade price and policy for any software, firmware, or hardware upgrades anticipated for the equipment bid. If the upgrades are provided without cost, this should be indicated.

3.45. Shipping and F.O.B. Point:

Unless otherwise specified, bid prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price bid), which means delivered to a state agency's receiving dock or other designated point as specified in this RFP without additional charge. Shipments shall be made in order to arrive at the destination at a satisfactory time for unloading during receiving hours.

3.46. Deliveries:

All orders shall be shipped FOB destination, prepaid and allowed, within seven (7) days ARO, clearly marked with the purchase order number. If delays in delivery are anticipated, the Contractor shall immediately notify the ordering agency of the revised delivery date or partial delivery date. The order may be canceled if delivery time is unsatisfactory. The Contractor shall Procurement and Contracts of any supply or delivery problems. Continued delivery problems may result in termination of the contract for cause

In the event delivery minimums apply, bidders shall submit that information with their bid response.

3.47. Charge Back Clause:

If the Contractor fails to deliver the product within the delivery time established by the contract, the State reserves the right to purchase the product from the open market and charge back the difference between contract price and open market price to the Contractor.

3.48. Demonstration Requirements:

A demonstration of the selected devices/equipment/solution for the using agencies may be required before final contract approval. The State of Kansas reserves the right to request said devices/equipment/solution fully configured/operational for testing, which shall be furnished at no expense to the State within ten (10) days after receipt of request. Devices/equipment will be returned at the bidder's expense if not consumed during the evaluation process.

3.49. Quarterly Reports:

REQUIRED FOR STATEWIDE AND "VARIOUS" CONTRACTS; OPTIONAL FOR "AGENCY SPECIFIC" CONTRACTS. The Contractor shall be required to file a quarterly report by each state agency or political subdivision making purchases under this contract. Reports are due no later than 30 days after the end of each calendar quarter and shall correlate with figures submitted as Administrative Fees (see below). Above referenced reports are to be filed with the Procurement and Contracts Open Records Officer or his/her designee located at 800 SW Jackson, Suite 600, Topeka, KS 66612-1216. Reports may also be required to be submitted to the specific using agency.

Electronic files shall be e-mailed to the following e-mail address: reports@da.ks.gov, in Microsoft® Excel or Microsoft® Access Database format.

The required reporting format may be found on Procurement and Contracts website at <http://da.ks.gov/purch>, under the "Forms" link.

Report Types - Reports shall be available reflecting the following information. Agencies and the Procurement and Contracts reserve the right to request additional information.

Sales Summary -- Report shall include a list of agencies and political subdivisions who have used the contract, a subtotal of sales to each agency or political subdivision, as well as a grand total of all sales.

Items Sold -- Report shall include a list of items sold to agencies and political subdivisions, indicating the contract price and using agency, a subtotal of sales to each agency or political subdivision, as well as a grand total of all sales.

Items Sold, by Agency - Same as above, except sorted by agency.

3.50. Quarterly Report Contact Information:

Contact information must be provided for use should the State of Kansas need to contact the appropriate officials within your company to discuss the issue of quarterly reports. Please complete the required information on the "Response Check List", attached.

3.51. Administrative Fee:

Contractor(s) must pay a 1/2% Administrative Fee on all purchases (including political subdivisions) made against this contract. The fee is to be included in the cost (bid price) of the goods or services. The Administrative Fee is to be based upon the total dollars invoiced under the contract. The Administrative Fee shall be made in check form, payable to the "State of Kansas - Procurement and Contracts" and must be paid within 30 days following the end of each quarter. Fees paid under this mandate shall correlate with figures submitted on the quarterly reports.

3.52. Materials and Workmanship:

The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this Contract, within the time specified, in accordance with the provisions as specified.

The contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of agency and/or Procurement and Contracts said issue is due to imperfection in material, design, workmanship or contractor fault.

3.53. Industry Standards:

If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

3.54. Equipment:

All proposed equipment, equipment options, and hardware expansions must be identified by manufacturer and model number and descriptive literature of such equipment must be submitted with the bid response.

3.55. Implied Requirements:

All products and services not specifically mentioned in this RFP, but which are necessary to provide the functional capabilities described by the specifications, shall be included. Other products required to make the described software functional shall be identified in the bidder's response.

3.56. Warranty:

Contractor represents and warrants to the State as follows, and Contractor acknowledges that all of such representations and warranties in its responses to the RFP (including the representations that Contractor meets the minimum qualifications in Section IV of the RFP) are material and have been relied upon by the State in: (i) selecting Contractor to perform the services described in the RFP and this Contract; and (ii) entering into this Contract:

1. Corporate Existence and Authority. Contractor is a corporation existing and in good standing under the laws of the State of Kansas, is qualified to do business in the State of Kansas, is properly registered with the Kansas Secretary of State and has all necessary power and authority to enter into this Contract and perform all of its obligations pursuant to this Contract. Contractor shall provide prompt notice to the State of any merger or combination with any other entity during the term of this Contract.
2. No Conflict. Neither the execution and delivery of this Contract, nor the fulfillment of or compliance with the terms and conditions of this Contract, nor the consummation of the transactions contemplated by this Contract conflicts with or results in a breach of the terms, conditions, or provisions of any other contract, agreement, instrument, or order of any court, governmental body, or administrative agency to which Contractor is a party or by which Contractor or its property is bound.
3. Duly Authorized. The execution and delivery of this Contract has been duly authorized by all necessary corporate action of Contractor and constitutes the valid, legal, and binding obligation of Contractor, enforceable in accordance with its terms.
4. Proprietary information and Licenses. Contractor shall disclose to the State upon request all relevant proprietary information related to the Project. Contractor hereby grants the State of Kansas, and its departments, agencies, affiliates, agents, employees and licensees (hereafter collectively referenced as the "State") a exclusive, royalty-free, non-revocable perpetual license to use and copy for any reason, (including but not limited to compliance with the Kansas Open Records Act), Contractor's bid, proposal #10047, any other document(s) submitted to or relevant Plan information requested by the State. Contractor warrants: 1) That this bid and proposal is an original work and has not been submitted for publication or published in any other medium; 2) will not violate any rights of third parties; and 3) does not contain any libelous material. This license may not be revoked and is effective on the date of execution. Contractor agrees to indemnify and hold the State harmless from any claim, demand, suit, action, proceeding or prosecution (including liability, loss, expense, attorney's fees, or any damage) asserted or instituted by reason of the submitted bid, proposal or other information provided to the State by Contractor. The State shall have the right in its discretion to extend the benefit of this indemnification to any person or entity at any time, and Contractor shall be liable as if originally

made by the State. The persons executing this License warrant that they have the authority to grant and execute this License for Contractor.

5. Patents, Trademarks, and Copyrights. If Contractor uses any patented, trademarked or copyrighted designs, devices, materials or other property, tangible or intangible, in connection with its performance of its obligations under this Contract, it shall provide for such use in the performance of this Contract in an approved legal manner by making a proper agreement with the patentee or owner of such trademark or copyright and shall defend, indemnify and hold State harmless on any claim relating to such items or use by the Contractor or State. Contractor also grants the State of Kansas, and its departments, agencies, affiliates, agents, employees and licensees a non-exclusive, royalty-free, non-revocable perpetual license to use and copy for any reason Contractor's bid and proposal and any other document(s) submitted to the State that may be related to this Contract.

6. All Statements True. All statements and representations made to the State by Contractor in the Proposal, during the selection process (including the oral interviews), during the negotiation of this Contract, and in the performance of this Contract are true and correct as of the date of this Contract.

3.57. ADA Compliance:

ADA Compliance: All Web-based information and services provided on Inter/Intra/Extranet sites by Kansas State government organizations shall be designed to be accessible pursuant to federal and state law. Web standards for accessibility are in various stages of development across the international Web community. These standards continue to evolve at a pace that mirrors the rapid rate of change in the Internet itself. In response, the State has developed the State of Kansas Web Content Accessibility Guidelines, available at (<http://da.state.ks.us/itec/WASGuidelines.htm>).

Individuals responsible for creation and maintenance of materials and services intended for delivery on State Web sites should consult the State of Kansas Web Content Accessibility Guidelines Implementation Guidance and Guidelines by Priority documents. These documents provide general guidance, a timeline for initial implementation, and a list of specific guidelines for compliance.

Some Web sites, such as the Center for Applied Special Technology's Bobby site, located at <http://www.cast.org/bobby/>, may be of help in testing pages and services. However, they do not provide a strict nor foolproof assessment of compliance with either the State of Kansas nor W3C guidelines. The results of this service should also not be interpreted as conclusive evidence of the accessibility of a given Web page or site.

In light of the rapid growth and changes in this technology, State standards in this area will be revised to accommodate changes in the technology, as will supporting reference sources such as the W3C guidelines. Users should monitor the State of Kansas guidelines for changes to insure compliance of all information and services with the latest version, and to stay abreast of State and federal laws that may supersede or extend them. For additional reference, the most recent version of the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines are available at <http://www.w3.org/TR/WAI-WEBCONTENT/>. Specific techniques for implementing the W3C guidelines can be found at <http://www.w3.org/TR/WAI-WEBCONTENT-TECHS/>.

Contractor hereby warrants that the products or services to be provided under this Contract comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Contractor further warrants that the products or services to be provided under this Contract comply with

existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the Contractor's products or services may be covered by that act. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services, which is brought to its attention.

If the State notifies the Contractor that a person has made a claim against the State concerning accessibility of products furnished by the Contractor under this contract, the Contractor will work with the State in an effort to remedy the claim in a timely manner. To the extent that the claim is related to products provided by the Contractor, the Contractor further agrees that it shall be liable for the actual costs and expenses, including attorney fees to defend the State and the monetary amount of any judgments rendered against the State as a result of any such claim.

3.58. Geographich Information System (GIS):

Contractor agrees that all databases created in this work should be compliant with existing GIS development standards and enterprise infrastructure to optimize spatial functionality and encoding for address data elements. The Kansas enterprise Geographic Information System (GIS) is based on Environmental Systems Research Institute (ESRI) technology. Kansas supports both internal and external web map service environments and server-side web map development is an emerging trend in GIS development standards, along with higher utilization of centralized spatial database engine (SDE) and implementation of comprehensive geocoding and address standardization. The GIS infrastructure includes central file servers, central Oracle SDE spatial databases, concurrent desktop licenses for ArcGIS and extension products, along with GPS field data collection and data management tools for spatial databases. Kansas supports and implements the GIS Addressing Standard established by the Kansas GIS Policy Board. A copy of this standard is accessible from the Kansas GIS website link at <http://oits.ks.gov/kito/gis/>

3.59. Independent Project Assistance:

The State may elect to retain one or more third parties to provide independent technology, procedure, project management, quality assurance monitoring, and/or other management assistance in the contract negotiations and implementation process resulting from this RFP. The objective of this external assistance is to provide an independent assessment of project progress and problems, provide management assistance as determined by the State, and proactively recommend strategies and actions to avoid or mitigate project risks. The Contractor must work cooperatively with this third party; share all vendor project management and implementation-related plans, working papers, and documentation associated with the project; and maintain a candid and open communication forum with the third party as well as the State.

3.60. Security Standard and Policies:

Contractor agrees to conform with the following:

The approach to security shall conform to the standards set forth by the National Institute of Standards and Technology (NIST) as detailed on their website. These standards can be found by accessing this link: <http://www.nist.gov/index.html>

The approach to security shall also conform to the standards set forth by the Information Technology Security Council as adopted by the Information Technology Executive Council and posted at: <http://oits.ks.gov/Kito/itsc/default.htm>

3.61. Litigation:

In the event of litigation involving this Contract or any matter produced or related to this Contract (hereafter referred to as "Litigation"):

- A. The Contractor will promptly notify the State after learning of any Litigation.
- B. The Contractor will cooperate fully by providing the State with all non-confidential relevant information and documents within its control as requested.
- C. The Contractor will reasonably assist the State in the defense of any Litigation.
- D. The Contractor will be responsible for the litigation-related fees, costs, and expenses, including attorney's fees, of the Contractor, the State, and any State Agency, Department, or Board of Trustees when the litigation is related to Contractor's role as a service provider to the State. For purposes of this paragraph, "litigation" includes litigation relating to matters involving this contract. The State reserves the right to select and retain counsel.
- E. Pending any decision, appeal, or judgment of litigation or the Settlement of any litigation or other dispute between the parties, Contractor shall proceed diligently and shall not discontinue performance of the Contract.
- F. Contractor shall be responsible for its negligent and intentional acts or omissions and the negligent and intentional acts or omissions of its employees, officers, directors, or other relative entities.
- G. In the event the State or any of its staff is the sole, named defendant in Litigation, such party shall have discretion to defend, settle, compromise, or otherwise resolve such Litigation.
- H. In the event the Contractor or any of its staff is the sole, named defendant in any Litigation related to this Contract, the Contractor shall keep the State informed of the status of the Litigation and any decision to settle, compromise, or otherwise resolve the Litigation, however, any settlement, compromise, or other resolution must be approved in writing by the State.
- I. In the event the State and Contractor are codefendants in any Litigation, the parties will cooperate fully with each other to defend, settle, compromise, or otherwise resolve such Litigation consistent with the terms of this Contract.
- J. In the event any entity other than the State or Contractor is named as a defendant in Litigation, the State can elect to defend, settle, compromise, or otherwise resolve such Litigation with respect to those other entities.
- K. Contractor shall timely notify the State of any suit or investigation by a public entity involving similar services under a contract with another State.

3.62. Acceptance:

No contract provision or use of items by the State shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.

3.63. Ownership:

All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agency.

3.64. Data:

Any and all data required to be provided at any time during the bid process or contract term shall be made available in a format as requested and/or approved by the State.

3.65. Certification of Materials Submitted:

The response to this RFP, together with the specifications set forth herein and all data submitted by the bidder to support the response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of any contract between the Contractor and the State of Kansas. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.

3.66. Inspection:

The State reserves the right to reject, on arrival at destination, any items which do not conform with specification of the Contract.

3.67. New Materials, Supplies or Equipment:

Unless otherwise specified, all materials, supplies or equipment offered by the Contractor shall be new, unused in any regard and of most current design. All materials, supplies and equipment shall be first class in all respects. Seconds or flawed items will not be acceptable. All materials, supplies or equipment shall be suitable for their intended purpose and, unless otherwise specified, fully assembled and ready for use on delivery.

3.68. Bidder Contracts:

Bidders must include with their RFP response, a copy of any contracts, agreements, licenses, warranties, etc. that the bidder would propose to incorporate into the any contract generated from this Bid Event. (State of Kansas form DA-146a remains a mandatory requirement in all contracts.)

3.69. Contract Price:

Statewide contracts are awarded by Procurement and Contracts to take advantage of volume discount pricing for goods and services that have a recurring demand from one or more agencies. However, if a state agency locates a vendor that can provide the identical item at a lower price, a waiver to "buy off state contract" may be granted by Procurement and Contracts.

3.70. Transition Assistance:

In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to State to allow for a functional transition to another vendor.

3.71. Award:

Award will be by line item or group total, whichever is in the best interest of the State of Kansas.

4. SPECIFICATIONS

4.1 Background:

- 4.1.1 The State of Kansas often needs independent professional expertise and Integrated Technology Services (ITS) for information technology projects. The State created an ITS contract (#06361) in 2003 to deliver these services, a similar contract for SRS (#09030) in 2006, a similar contract for KDOT (#07896) in 2005, and a Quality Assurance (QA) or IV&V Contract in 2000. Those contracts delivered many advantages, but had some administrative shortcomings. This replacement for those contracts will establish a single statewide contract with a pre-qualified list of contractors for Integrated Technology Services grouped by areas of expertise. Work shall be offered competitively to contractors within each group on an as needed basis by State agencies in the form of Task Orders (TO).
- 4.1.2 The State to date has identified 25 groups or categories of need that will be addressed over time using the processes described herein. Once all 25 groups have been awarded, the ITS contract(s) described above shall be discontinued. The IV&V or QA Contract described above ended with the award of Group 4. In the meantime, the ITS contracts may be renewed or augmented as demand exists. The groups for the new contract shall be developed in separate solicitations. This solicitation addresses two of those groups. The State may create additional groups as needed beyond the initial 25.
- 4.1.3 If you are an incumbent under any of the ITS Contracts described above, and you deliver services as described herein under those contracts, and you want to be considered for award under this contract, you must submit a response to this request to be considered for award. There will be no transfer of firms or grandfathering of firms from the previous ITS contracts to this contract.
- 4.1.3 Once the original 25 (or so) groups have been completed, it is the State's intention to re-start the process with groups 1 & 2 and then progress through all the groups again on an ongoing basis, so there will be a continual refreshing of the available firms. However, at the request of agencies who identify unmet needs, or should a contractor be removed from a group creating a void in available services, or similar challenges, the state may address a group out of sequence. Finally, we would expect most groups will be stable and not refreshed for an 18-24 month period from date of initial award.
- 4.1.4 There shall be no guaranteed minimum or maximum work to any one Contractor from this contract. It is the intent of the state to offer most ITS work through this RFP but the state reserves the right to offer ITS work through other RFP's.
- 4.1.5 There is one (1) group included in this request.

4.2 Scope of this Solicitation:

4.2.1 GROUP ELEVEN (LEGACY SYSTEM CONVERSIONS)

Kansas agencies have and operate a large number of computer applications, some of them with origins dating back to the 1960's. In many cases, the programming languages or database platforms employed to build the applications are no longer used to build current

applications (COBOL, FORTRAN, CAGEN, CICS, Adabas, Natural, Focus, VSAM, ISAM, etc.) In many cases the original documentation created with the programs has been lost or compromised. In most cases the personnel who created the applications have left state service or are unavailable. While the applications are in a “fragile” state, they are often critical to an agency’s ability to execute a mission. In such cases, the agency may want to try and migrate or port the application to a more modern hardware and software platform. This group is intended to identify firms with demonstrated expertise in accomplishing such migrations. If your firm has internal expertise in accomplishing such application transformations, you should submit a proposal.

We are interested in firms who employ staff with skill sets that are relevant to legacy systems or who employ automated tools to accomplish such conversions or use a combination of techniques to achieve successful conversions.

4.3 Special Provisions for its Solicitations:

- 4.3.1 Respondents shall accept the state’s terms and conditions as expressed in the RFP without exception (including DA-146a Contractual Provisions Attachment). Respondents shall agree to use the Task Order processes as described herein. Respondents shall pass all other requirements without fail (tax clearance, no criminal violations, etc).
- 4.3.2 Firms may nominate themselves (send in proposals) for award in multiple groups. Each group nomination or proposal requires submission of a full separate set of materials. Each material set shall be self-contained and stand-alone. Proposals shall NOT contain “confidential” or “trade secret” information.
- 4.3.3 Proposals that do not accept the state’s terms and conditions, and do not agree to use the described TO process, are incomplete, or contain “confidential” or “trade secret” or “proprietary” notations may be summarily rejected without further consideration.
- 4.3.4 Proposals will be preferred from firms that:
 - Have been in business and provably profitable for at least ten years (see Sect 4.3.5 for more),
 - Have successfully held similar or larger contracts with Kansas or other states,
 - Provide outstanding references from entities at least as large as Kansas,
 - Have an ongoing physical presence in Kansas,
 - Evidence they are conversant with the latest Kansas State Technical Architecture,
 - Have quality assurance processes (ISO 9000 etc) (See Section 4.3.6 for more),
 - Have active and documented programs for CMM/SEI improvement.
- 4.3.5 **Financial Statements:** As part of the evaluation process, publicly held Proposers **may** be asked to provide a copy of their ten most recent published annual reports to stockholders, a copy of their last Form 10-K as filed with the Securities Exchange Commission (SEC), and copies of any Form 10-Qs filed with the SEC since their last 10-K filing. Privately held Proposers **may** be asked to provide their ten most recent audited financial statements, including the opinion(s) issued by an external accountant (for private firms, this information may be deemed confidential and shall not be subject to the Kansas Open Records Act after Contract Award). Do not submit financial statements or materials with

your response. You should be prepared to submit such information and in as much completeness as possible, but only when and if we ask.

- 4.3.6 ISO 9000 certification and compliance. The State will prefer firms providing ISO 9000 certification from accredited ISO certification entities (see: http://www.iso.org/iso/home/standards/management-standards/iso_9000.htm).

- 4.3.9 **Subcontractors:** A Contractor may use subcontractors when responding to Task Order Requests. However, note that to become a Contractor a Vendor must first convince the evaluation committee and PNC that the Vendor is among the top respondents for the group. If a Vendor is unable to mount an effective initial proposal without subcontractors, then those must be shown in the proposal, and the State may then rely on those consistently appearing as resources (without substitution) in subsequent Task Order Responses. i.e a Vendor relying on subcontractors to build a credible initial response will probably be competing at a disadvantage. Any entity (person, partnership, LLC, Corporation, etc.) other than the contractor or contractor's employees, used by the contractor to fulfill its obligations under a contract would be a subcontractor.

4.4 Task Order (TO) Process

Some agencies use slightly different terminology to talk about Task Orders. Some agencies refer to these as Task Proposal Requests (TPR) or Task Requests (TR), but the purpose is the same. Generally, agencies wanting to engage a contractor issue a Task Request or a Task Proposal Request. Firms wanting to be considered respond with Task Proposal Response. The winning firm receives and executes a Task Order with the agency or participates in the crafting of the Task Order with the agency which both parties then execute.

- 4.4.1 The TO process shall include the following steps:

- 4.4.1.1 The contracting state agency will E-mail (preferred) or fax a TO to all Contractors within the targeted group, the Procurement and Contracts, and the Kansas Information Technology Office.
- 4.4.1.2 All questions concerning the TO shall be submitted in hard copy or electronically to the agency contact person listed within the TO. The questions shall be answered and distributed via E-mail or fax by the agency contact person to all Contractors within the targeted group, the Procurement and Contracts and the Kansas Information Technology Office. Any violation of this requirement, including directing questions to persons other than the agency contact person, may result in removal of the Contractor from the contract or other corrective action, as deemed appropriate by the Procurement and Contracts.
- 4.4.1.3 TO responses shall be submitted by each interested Contractor via hard copy or e-mail (preferred) or fax by the close date specified in the TO. The TO close date will differ with each request, but shall at least have a closing date consistent with the Procurement and Contracts policies:
- | | |
|---------------------|-------------------|
| For TOs valued at | Closing date |
| Less than \$25,000 | at least 3 days |
| \$25001 to \$50,000 | at least 10 days |
| More than \$50,000 | at least 21 days. |

Names and resumes for all individuals on the Contractor team for the work identified in the TO shall be identified in the TO response. Only resumes of persons who are available and shall actually be assigned to the TO are to be provided.

- 4.4.1.4 Evaluation and review of all TO responses shall begin upon the closing date of the TO as cited on each respective solicitation. Subsequently, interviews with the Contractor may be held.
- 4.4.1.5 In general, evaluation of a TO response will be based on best price for competency, no major problems in prior service, and the best interest of the State of Kansas. A TO may be negotiated. However, negotiations that include any change to the specifications shall provide matching information to all Contractors on the pre-qualified list if the change is substantial enough that it would cause more than a minor alteration in the responses received. The state reserves the right to base an award on, for example, the individual Contractor's special qualifications to perform a particular project and/or the cost and suitability of staff offered for a project and to exercise discretion in selecting a Contractor for any given assignment.
- 4.4.1.6 The award (or further request if additional information or clarification is required) will generally be made within five to ten working days of the due date of the response.
- 4.4.1.7 The chosen Contractor will be provided 2 copies of the award for the TO. The agency head or a designee authorized to contractually bind the agency will sign each award.
- 4.4.1.8 The Contractor shall review and have an authorized person sign the award, accepting terms of the TO and response and binding the Contractor contractually to the engagement. The Contractor shall maintain one fully executed copy. One fully executed copy shall be returned to the agency contact person. One photocopy of the fully executed TO shall be sent to the Kansas Information Technology Office and to the Procurement and Contracts by the Contractor.
- 4.4.1.9 Each award shall contain clear provisions identifying dates for delivery of ITS products and the completion of ITS activities.
- 4.4.1.10 **In preparing, distributing, processing, evaluating, and awarding a TO, the agency and involved contractors shall in all regards and without qualification, follow all applicable state laws, rules & regulations, policies, and practices regarding procurements.**
- 4.4.1.11 **On rare occasions, non-competitive Task Orders may be executed by a contractor and agency for emergency needs. Such Task Orders shall be characterized as short-term, generally shall be for significantly smaller engagements, and shall possess characteristics that clearly identify them as being abnormal and not suitable for execution under the normal Task Order processes. Immediately on execution of an emergency Task Order, a photocopy of the fully executed TO shall be sent to the Kansas**

Information Technology Office and to the Procurement and Contracts by the Contractor.

- 4.4.1.12. Infrequently, and only in response to a normal Task Order (TO) process and execution, an agency and contractor may execute a Task Order on a Time & Materials basis.
- 4.4.2 Unless noted otherwise in a **TO**, the following provisions shall apply.
- 4.4.2.1 The state reserves the right to review and disapprove all Contractor staff prior to the commencement of work. This may include but is not limited to review of resumes, interviews and contacting references. The state also reserves the right to review and disapprove all contract staff prior to the start of different phases of a given **TO**.
- 4.4.2.2 The state reserves the right to terminate a **TO** at any time. Cause for termination may include but is not limited to (a) personnel originally offered by Contractor cease affiliation with said Contractor, (b) funding terminates, (c) Contractor fails to comply with contractual/**TO** requirements or (d) termination is in the best interest of the State.
- 4.4.2.3 The state reserves the right to terminate payment for Contractor staff assigned to the agency effective upon written notice to the Contractor if performance does not meet agency expectations. The Contractor shall provide a replacement acceptable to the agency. When any replacement is necessary, the “ramp up time” for the replacement staff time shall be at no cost to the agency. The agency and the Contractor on a case by case basis will determine the “ramp up time” for replacement staff.
- 4.4.2.4 Contractor shall not reassign, terminate or add staff without prior written consent from the agency head or designee.
- 4.4.2.5 Key staff shall be identified on a **TO**. If a position is identified as “key” and assigned staff is removed from the position without prior consent of the agency or leaves the employ of the Contractor without thirty (30) days written notice to the agency, an amount equal to the number of hours lost shall be deducted from outstanding invoices and any future billings. The “hours lost” will be agreed on by a negotiated process between the agency and the Contractor.
- 4.4.2.6 Contractor shall not hire state staff or another Contractor’s staff working for the state without the written consent of the Director of the Procurement and Contracts or the Director’s designee. In the event a Contractor fails to comply with this requirement, the Contractor may be removed from the pre-qualified list.
- 4.4.2.7 Contractor staff shall be expected to work as part of a cooperative team effort with staff from other firms as well as with state staff.
- 4.4.2.8 Contractor staff shall perform their duties in accordance with state policies, procedures and requirements, using state specifications and standards. Applicable policies, procedures, requirements, specifications and standards

will be provided to the Contractor before they may be applied. All products are subject to agency review and the buying agency has final authority in accepting services and products.

- 4.4.2.9 The work day schedule and leave time shall be coordinated with and approved by the agency. State holidays are sometimes inconsistent with Federal or commercial holidays. Contractor shall observe the state holiday schedule when working on an ITS engagement.

4.5 **Staffing Requirements**

- 4.5.1 Contractor personnel assigned to each engagement shall have adequate knowledge of systems operations and development environments, techniques, and tools.
- 4.5.2 Contractor personnel assigned to each engagement shall have broad knowledge of business operations, internal control concepts, and application processing controls.
- 4.5.3 Contractor supervisors assigned to each engagement shall have adequate supervisory, communications, and project management skills.
- 4.5.4 A Certified Project Manager, Certified Information Systems Auditor, or professional employee with similar credentials shall provide Contractor oversight/management. This employee shall at least review and sign off on each report delivered in a professional capacity.
- 4.5.5 The agency will note in the **TO** what the project environment includes and may limit consideration to those firms on the pre-qualified list who have experience in the named environment.

4.6 **State Resources if Provided:**

The state agency may assign agency staff to work with Contractor staff on an ITS engagement. If agency staff are assigned, the Contractor and agency shall clearly designate in the executed award which entity is responsible for supervision of the assigned person(s) and how their performance is to be measured.

4.7 **General Provisions**

Unless a departure is otherwise specifically noted in writing within a TO, the following provisions shall apply to all TOs issued pursuant to this Contract:

- 4.7.1 All charges shall be billed in accordance with the response to a given **TO**. Prices and deliverables shall not change during the term of the award unless a written amendment to the award is negotiated between the agency and Contractor.
- 4.7.2 All work shall generally be performed or based in Topeka, Kansas. There shall be no reimbursement for travel expenses other than as listed below:

- 4.7.1 For work done in Topeka, no travel expense shall be paid.

- Work required by the agency to be performed outside Topeka may receive reimbursement at the rates stated in the State of Kansas "Employee Travel

Expense Reimbursement Handbook” in effect at the time the travel expense is incurred. The handbook is at the web site <http://da.state.ks.us/ar/employee/travel/travbk.htm>. Reimbursement for travel shall require prior written approval by the agency head or designee. Invoices for all travel expense reimbursement shall include applicable receipts.

- 4.7.3 The state agency will normally provide office space, supplies and equipment unless otherwise specified in the TO. Any abuse of agency-provided resources by the Contractor or its subcontractor may result in the award termination, the Contractor being removed from the pre-qualified list and/or recovery of any associated costs, at the sole discretion of the agency with the approval of the Director of the Procurement and Contracts or the Director’s designee. Recovery of any associated costs may include non-payment of current invoices, deductions from future invoices or any other means available to the agency for such recovery.
- 4.7.4. All contracts entered into under this RFP shall conform to all federal and state laws and regulation applicable to the agency.
- 4.7.5 **Proprietary Rights and Ownership.**
- A. Contractor agrees that all computer Software which the Contractor, its employees and agents develops under this Contract (the "Custom Software"), all intermediate and partial versions thereof, all copyrightable and patentable aspects of the Software, Work Product, and Trade Secrets, as well as all copies of all such works in whatever medium fixed or embodied as well as all Deliverables resulting from Contractor’s performance of Services, program materials, flow charts, notes, outlines, and the like created in connection therewith (collectively, "Work Product"), and any formulae, processes, algorithms, ideas, and other information not generally known to the public (whether or not protected or protectable by copyright) and developed or generated by the Contractor, its employees and agents in the course of developing the Software ("Trade Secrets"), automatically at moment of creation shall be the sole property of the State upon their creation of (in the case of copyrightable works) fixation in a tangible medium of expression. Contractor hereby expressly disclaims any interest in any of them; and the Custom Software, Work Product, and Trade Secrets will be or contain valuable and proprietary information of State, and Contractor agrees not to disclose the same to any third party without the prior written permission of the State, or to use any such items to create any other computer programs or derivative works either for its own use or otherwise.
1. The State shall have title to any inventions which are made during the course of the Work Product under this Contract as well as any patents thereon in all countries. The Contractor agrees to make written contracts with all of its officers, employees and programmers who participate in any work performed or Work Product created for the State in the form of an "Employee Invention Agreement" indicating the above ownership vests with the State upon creation, and to submit a duplicate original of all such agreements to the State prior to the rendering of any services by any programmer under this agreement.
 2. Unless otherwise provided, data which originates from this Contract shall be work product or “works for hire” as defined by the U.S. Copyright Act

of 1994 and shall be owned by the State. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, custom computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights. Contractor shall not use or in any manner disseminate such work product or "works for hire" to any third party without the prior written permission of the State. Contractor shall take all steps necessary to ensure its agents, employees, or subcontractors shall not copy or duplicate any programs or Work Products or any portion thereof, in any form, or make any disclosure with reference thereto to any third party.

3. Contractor and any individual employee or agent involved in this Contract shall promptly disclose to the State the products of their work hereunder, and those products will be deemed to be a work product or "works made for hire," and the State shall be considered to be the person for whom the work was prepared under the copyright laws of the United States.
 4. Additionally, at time of creation or delivery as appropriate, Contractor shall convey to the State good title to any Equipment, Custom Software (State customization files, source, and object code), and licenses for the Pre-Existing Software, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.
 5. The Work Product ownership provisions of any subcontract or any Task Order or Change Order issued under this Contract shall be identical to the provisions of this Article.
- B. **Assignment.** Contractor hereby assigns to the State, without further consideration, all of its right, title, and interest in and to all of the Custom Software, Work Product, and Trade Secrets developed by the Contractor, its employees and agents for the State during the term of this Contract, and all copies of any of them, including, without limitation, all copyright and other proprietary rights thereto throughout the world (and all renewal and extensions thereof) and including as part of such assignment, the right to create and distribute derivative works from any of the Custom Software, Work Product, or Trade Secrets. The Contractor hereby agrees to transfer to the State the entire right, title, and interest to any copyrights and any work or work product which may not be deemed "works for hire" under the copyright laws or work product, but which is produced by the Contractor in accordance with the terms of this Contract. The Contractor further agrees to execute any documents which may be necessary or appropriate to allow the State to perfect its interest in the copyright for such Work Product. The Contractor shall not be entitled to any additional payment or compensation for assisting and cooperating with the State in obtaining these copyrights.
- C. **Cooperation.** Contractor will at all times during its service hereunder for the State and after termination thereof for any reason, assist the State in every proper way (at Contractor's expense) to obtain for the benefit of the State patents, copyrights, trade secrets, and other legal protection for the Custom Software, Work Product, and Trade Secrets it develops for the State. To that end, Contractor agrees (i) to assist the State in registering, and from time to time (at Contractor's expense) in enforcing, all patent, copyrights, and other rights and protections relating to the Custom Software, Work Product, and Trade Secrets in any and all countries; and (ii) to execute, acknowledge, and deliver, when so requested by the State or its attorneys, all papers, including applications for

patents or copyrights, assignments, and affidavits, as they are needed in order to obtain, maintain, or renew such patents or copyrights, Trade Secrets, or other legal protection, or to vest title thereto in the State. Further, Contractor irrevocably designates and appoints the State its agent and attorney-in-fact to act for and on its behalf to execute, register, and file any such applications, and to do all lawfully permitted acts to further the registration, prosecution, and issuance of patents, copyrights, or similar protections with the same legal force and effect as if executed by Contractor.

D. **Injunctive Relief.** Contractor acknowledges that the State may not have an adequate remedy at law in the event of any breach or threatened breach by it of any provision of this Article, and that the State will suffer irreparable damage and injury as a result. Accordingly, in the event of any such breach or threatened breach, Contractor hereby consents to the granting of injunctive relief against it by any court of competent jurisdiction without the posting by the State of any bond or other security there for, and Contractor further agrees not to raise as a defense the availability of monetary damages as a remedy.

E. **License.** In the event (and to the extent) that the Software, Work Product, and Trade Secrets contain any items or elements which may be proprietary to Contractor, Contractor hereby grants to the State an irrevocable, perpetual, nonexclusive, royalty-free, world-wide license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based on such proprietary items; and (ii) authorize others to do any or all of the foregoing.

4.7.6. Contractors shall provide the usual support services to their assigned staff. Monitoring assigned tasks will be completed by agency staff. This does not, however, supplant the Contractor's responsibility for supervision of its own staff.

4.7.7. Neither Contractor nor Contractor's personnel shall be deemed to be employees of the State. Contractor shall take appropriate measures to ensure that its personnel who perform services are adequately covered by any and all employer related taxes and insurance in accordance with applicable law. Contractor shall at all times comply with applicable employment laws as regards their employees.

4.7.8. The contractor warrants fault-free performance in the processing of date and date related data (including, but not limited to, calculating, comparing, and sequencing) by (identify the hardware, software, service or system). Fault free performance includes, but is not limited to the manipulation of data with dates prior to, through, and beyond January 1, 2000, and shall be transparent to the user.

Hardware and software products, individually and in combination, shall successfully transition into the year 2000 with the correct system date and correct calculations which utilize or refer to the date data, without human intervention, including leap year calculations. Hardware and software products, individually and in combination, shall also provide correct results when moving forward or backward across the year 2000.

4.7.9. The Contractor shall be in good standing with the State of Kansas and have no significant problems in prior work for the state.

4.7.10. The Contractor shall be totally responsible for the work performed by their subcontractors and management of their subcontractors.

4.7.11. All State information or data is considered confidential information. Contractor agrees to return any or all information or data furnished by the State promptly at the request of State, in whatever form it is maintained by Contractor. Upon termination or expiration of this agreement, the Contractor and each of the persons and entities working for the Contractor shall destroy and return to the State all data, information electronic, written, or descriptive materials or any related matter of any type including but not limited to drawings, blueprints, descriptions, or other papers or documents which contain any such confidential information.

- A. Contractor will have access to information and private or confidential data, maintained by State of Kansas, to the extent necessary to carry out Contractor's responsibilities under this contract. This information and data may include, but is not limited to security arrangements, personal financial information, information regarding undercover law enforcement agents, social security numbers, student employees, medical providers and/or their recipients, etc. Contractor agrees that any information or data it may have in its custody regarding any participant or other information identified by the State as being private or confidential shall be kept strictly confidential. All the information and data of the State shall be considered to be confidential and private and Contractor may not disclose any information or data at any time to any person or entity. Contractor agrees to comply with all state and federal confidentiality laws in providing services under this Contract. Contractor also agrees to the following:
1. Contractor shall be fully responsible for providing adequate supervision and training to its agents and employees to ensure compliance with all applicable State and Federal Acts regarding confidentiality and/or open records issues. No private or confidential data collected, maintained, or used in the course of performance of this Contract shall be disseminated by Contractor except as required by statute, either during the period of the Contract or thereafter. Contractor shall only use confidential information as required by this Contract. All electronic data shall be secured through encryption or other comparable security measures.
 2. Contractor shall limit access to confidential information solely to staff of Contractor who has a business need to know for purposes of fulfilling Contractor's obligations under this Contract. Contractor shall not remove confidential information from State's site without State's prior written approval.
 3. The Contractor shall hold all such confidential information in trust and confidence for the State, and agrees that it and its employees will not, during the performance or after the termination of this agreement, disclose to any person, firm, or corporation, or use for its own business or benefit any information obtained by it while in execution of the terms and conditions of this Contract.
 4. Any staff, individual or entity assigned to work for Contractor under this agreement shall separately sign a non-disclosure agreement(s) and be bound by the requirements of this Subsection and any Kansas Department of Administration computer security user agreement, which is incorporated by reference herein.
 5. All Confidential Information of the State shall be and remain the sole property of the State. Upon termination of this Agreement or at the request of the State, the Contractor shall deliver all Confidential Information promptly to the State and shall not make, retain or distribute any copies thereof.

- B. **Unauthorized Use.** The Contractor shall not use the names, home address, phone numbers, or any other information obtained by implementation or execution of this Contract about employees, citizens, vendors or other information for any purpose other than the performance of this Contract.
- C. **Injunctive Relief.** Contractor acknowledges that any breach of its confidentiality obligations hereunder will constitute immediate and irreparable harm to the State, its citizens and/or its successors and assigns, which cannot adequately and fully be compensated by money damages and will warrant, in addition to all other rights and remedies afforded by law, injunctive relief, specific performance and/or other equitable relief.
- D. **Confidential Information.** Contractor shall hold State harmless and indemnify the State for expenses or damages, of any kind, incurred or suffered by the State as a result of the unauthorized disclosure or failure to protect or secure personal or other data or information identified in Article XVII by Contractor or any agent, representative, employee or subcontractor of Contractor. Contractor shall notify the State of any loss or breach of confidential information or data within twenty-four (24) hours of such knowledge. Contractor shall also be responsible and liable for any and all damages to individuals due to such breaches or loss of confidential information. In the event of any security breach in which the confidential information of one more individuals is compromised or is potentially compromised, Contractor shall be responsible and pay for any and all damages, expenses, and costs (Including lost wages and efforts spent to defend or correct against identity theft) caused to the State or any individual for the disclosure of any State Information. Contractor shall provide notice to the State and affected individuals of such disclosure and shall also offer free of charge to individual or the State identify theft protection insurance for a period of five (5) years. These terms shall also apply to any third-party vendor or subcontractor. The State shall in its sole discretion make the final determination of this provision.
- E. **Survive Termination.** The provisions of this Article survive termination of this Contract.
- 4.7.12. No Contractor or Subcontractor may perform QA or IV&V services for a project where they have any other interest, whether as a prime or subcontractor. Appointment as a QA or IV&V Contractor shall preclude appointment for any other work on the same project so long as the QA or IV&V assignment remains active.
- 4.7.13. **Background Checks and Investigations of Staff:** State may at its sole discretion conduct background checks and investigations of Contractor's staff. Contractor and Staff consent and agree to supply such personal information, including a full set of processable fingerprint impressions, and any additional information as may be required by the State or the Kansas Bureau of Investigation to perform background checks and investigations. Contractor is responsible for getting staff consent prior to starting work on this contract.
- 4.7.14. Agencies may include performance clauses in Task Orders. Inclusion of performance measures in a Task Order should not affect the "rates" proposed by a firm, but may clearly impact the overall costs of a Task Order Response. Performance measures may include but shall not be limited to:

Performance Bonds
 Surety Bonds
 Retainage
 Deposits
 Corporate Guaranties
 Performance Guaranties

The rights and remedies provided for the State in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law. In the event the State determines in its sole discretion that Contractor has not provided the services or goods identified in a Task Order, Contractor shall be responsible for any and all costs and expenses, including attorney's fees and expenses to hire other vendors to modify, complete, adjust finish or fix the services or goods as determined by the State.

4.7.15. A Contractor may be stricken from an awarded group for non-performance factors. Such factors may include, but shall not be limited to:

Bankruptcy or similar events
 Acquisition by a non-performing contractor
 Conviction under Kansas criminal statutes
 Failure to maintain tax-cleared status
 Violation of the Kansas Conflict of Interest statutes
 De-barement in Kansas or another state
 Concurrence by the Procurement and Contracts Director that a contractor has failed to perform under a contract
 Three referrals (even if not sustained) to the Procurement and Contracts Director for failure to perform.

4.7.16 **Keys, Time Locks, Access, Source Code and Electronic Software Disablement and Repossession Warranty.** Contractor represents and warrants that it will not under any circumstances or conditions install various disabling devices, access codes, traps, copy-protection devices, keys, time or date bugs, lock-up or deactivating devices, time bombs, termination by remote access, removal of source code or other programs or code in the software or work product which could erase, corrupt, restrict use of, modify any data of the State, freeze, interfere with, or prevent the State's use of the software or its computing environment, destroy or terminate software or work product or data contained in it or bypass any internal or external software security measure in order to obtain access to the systems or data of the State without the written consent of the State. Contractor also warrants that no electronic self help will be used at anytime in the future. Should any such device appear at any time in the system, software or work product Contract agrees to pay for any and all damages, expenses and costs, including reasonable attorney's fees incurred by the State. Contractor shall also agree to pay punitive damages for installing any such disabling device as determined by a Kansas State Court.

4.8 **Project Management Provisions**

4.8.1 To mitigate some of the risk inherent in projects, the state has established a Project Management Methodology (PMM) and a reporting process for all projects in the state with any significance. It is possible that some ITS-related work will be sizeable enough to qualify as a reportable project or may be part of a reportable project under the state's standards. The current project management methodology is documented at

<http://da.state.ks.us/kito/ITPMM.htm>. under “IT Project Management”. The methodology, when properly executed, creates at least the following for each project:

- Designated Project Team
- Designated Project Manager
- Designated Project Sponsor
- Project Steering Committee
- Configuration Management Function
- Internal Quality Assurance Function
- Risk Management Function
- Project Statement
- Project Plan
- Project Budget
 - Project Estimate Summary
 - Cost at Completion Report
- Project Schedule
 - Activity Tracking Reports
- Work Breakdown Structure
- Work Product Identification
- Configuration Management Plan
- Requirements Traceability Table
- Project Staffing Plan
- Resource Loading Profiles
- Project Organizational Chart
- Risk Management Plan
- Internal Quality Plan
- Issues Management Function
- Project Start-Up Checklist
- Project Database
- Change Manager
- Change Control Board
- Project Status Meetings

Bid Event EVT0002480

Group #11

Legacy System Conversions

XYZ Company
123 SW Mainstream St
Technology City, KS 666XX

5. COST SHEET

Bidder Name:

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.